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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: BUFFALO, NY Date: FEB 2 3 2004

IN RE: Applicant [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Buffalo, New York. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed, and the August 23, 2002, AAO Order dismissing the appeal will be affirmed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. The applicant is the son of a lawful permanent resident father and he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and adjust his immigration status to that of a lawful permanent resident.

The district director concluded the applicant had failed to establish that extreme hardship would be imposed on his father. The application was denied accordingly. On appeal, counsel asserted that the district director erred in not applying the section 212(i), 8 U.S.C. § 1182(i), pre- Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) law in effect at the time the applicant filed his adjustment of status application, rather than the section 212(i) law in effect at the time the application was adjudicated. Counsel additionally asserted that the district director erred in not fully considering the hardship that the applicant's father and two United States citizen children would suffer if they were separated from the applicant.

In its dismissal of the applicant's appeal, the AAO determined that legal precedent decisions reflect that the amended section 212(i) was intended to apply to decisions made at the time of their adjudication. The AAO determined further that based on the evidence in the record, the applicant had failed to establish that his lawful permanent resident father or U.S. citizen children would suffer hardship beyond that normally encountered upon the removal of an alien, if the applicant were removed from the United States.[1]

In a Motion to Reopen, dated September 23, 2002, the applicant, through different counsel, asserts that:

> [P]rior counsel was grossly negligent and ineffective in failing to address the concept of materiality of any fraud alleged against the applicant. These items include, inter alia, the concept of materiality in any fraud alleged by the Service to have been committed by the Applicant . . . . Alternatively, even assuming arguendo that prior counsel had raised but nevertheless was unsuccessful on the issue of materiality, it is abundantly clear that prior counsel was grossly negligent and ineffective in failing to present any truly probative evidence on behalf of the Applicant, particularly evidence that speaks directly to the issue of extreme hardship.[2]

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[1] The AAO presently notes that section 212(i) of the Act does not include U.S. or lawful permanent resident children as qualifying relatives for extreme hardship waiver purposes. The AAO therefore improperly considered hardship to the applicant's U.S. citizen children in its previous decision.

[2] The AAO notes that the present Motion to Reopen, was filed by attorney [redacted] The record contains no Form G-28, Notice of Appearance, indicating that [redacted] is now the applicant's attorney of record. Moreover, the record contains no evidence to indicate that the applicant's previous counsel of record [redacted] has withdrawn their representation. To the contrary, it appears that True, Walsh and Miller, continues to represent the applicant in present removal and District Court proceedings.

Attorney Salazar then requests at least thirty days to supplement the motion to reopen with a brief, affidavits, new facts and supporting documentary evidence. The AAO notes that no additional information or evidence was received by the AAO.

8 C.F.R. § 103.5 states in pertinent part:

> (2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.
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> . . . .
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> (4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

The AAO finds that no new evidence was submitted support the assertions made in the present motion to reopen. Moreover, the assertions made on motion were vague and lacked detail, and Mr. Salazar failed to establish ineffective assistance of counsel on the part of the applicant's counsel of record.[3] The motion will therefore be dismissed.

ORDER: The motion is dismissed, and the order of August 23, 2002, dismissing the appeal is affirmed.

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[3] *Matter of Lozada,* 19 I&N Dec. 637 (BIA 1988), states that:

> A motion to reopen or reconsider based upon a claim of ineffective assistance of counsel requires 1) that the motion be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, 2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and 3) that the motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not.